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EXAMINER

BLAIR, DOUGLAS B

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 7

Application Number: 09/494,218
Filing Date: January 28, 2000
Appellant(s): BREWER, JASON M

Carlton H. Hoel, Reg. No. 29,934
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/6/2003.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The prior art rejection of claim 5 stands or falls alone because appellant's brief does not include a statement that this claim does not stand or fall alone and reasons in support thereof. See 37 CFR 1.192(c)(7).

The prior art rejection of claims 1-4 and 6-9 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

The enablement rejection of claims 2, 6-7 and 9 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

6,295,638	BROWN	09-2001
6,263,360	ARNOLD et al.	07-2001
6,389,589	MISHRA et al.	05-2002

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

- a) Claim 5 is rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Number 6,295,638 to Brown et al..

As to claim 5, Brown teaches a system for loading Java class file to a client device (col. 2, lines 50-67) comprising: a gateway coupled to said server and responsive to a Java class file for creating a c-code representation of said class file (col. 7, lines 25-44, The front end compiler creates a c-code representation.); said gateway creating a binary representation of said c-code representation (col. 7, lines 25-44, The backend compiler creates optimized content.); a network coupled between said gateway and said client device for sending the binary representation to said client device (col. 5, lines 38-54); a loader for loading said binary representation at said client device (col. 8, lines 20-61); and, means for copying said binary representation into the internal class structure in an interpreter of said client device (col. 8, lines 62-67 and col. 9, lines 1-15).

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Because all of the limitations from the claimed invention were expressly taught by Brown, claim 5 is rejected.

b) Claims 1-4 and 6-9 are rejected under 35 U.S.C. 103(a).

Claims 1-3, and 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 6,295,638 to Brown et al. in view of U.S. Patent Number 6,389,589 to Mishra et al..

As to claim 1, Brown teaches a method for loading class files from a server to a client (col. 2, lines 50-67) comprising: loading an application class onto a gateway server that preloads and preresolves said class (col. 7, lines 25-44, The front end compiler preloads and preresolves the classes.); creating a binary representation of new portions of the preloaded and preresolved class at said gateway (col. 7, lines 25-44, The backend compiler creates optimized content.); however Brown does not explicitly teach sending only the new portion to the client.

Mishra teaches a method of sending only the new portions of application classes to the client (col. 17, lines 36-62, Only upgrade components are sent to the client.).

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of Brown regarding a method for loading class files with the teachings of Mishra regarding a method for sending only new portions of classes to a client because sending a smaller amount of data conserves bandwidth.

Brown teaches the invention substantially as claimed (e.g. exemplary claim 7) including a method for loading Java class files to an embedded client device from a server (col. 2, lines 50-67) comprising the steps of: gateway retrieving a Java class file, gateway preloading and

preresolving the Java class file to produce a representation of the Java class file (col. 7, lines 25-44, The front end compiler preloads and preresolves the classes.); creating at the gateway a binary representation of only said new portion of the preloaded and preresolved representation of the Java class file (col. 7, lines 25-44, The backend compiler creates optimized content.); sending said binary representation into said embedded client device (col. 5, lines 38-54); and, copying said binary representation into the internal class structures in the interpreter of a Java virtual Machine of the embedded client (col. 8, lines 62-67 and col. 9, lines 1-15); however Brown does not explicitly teach a method of determining at the gateway a new portion of the representation and forwarding only the new portion of a file.

Mishra teaches a method of determining at the gateway a new portion of the representation (col. 17, lines 36-62, The server determines which client components to upgrade.).

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of Brown regarding a method for loading Java classes with the teachings of Mishra regarding the method of making a determination of which class to load because sending a smaller amount of data conserves bandwidth.

As to claim 2, it comprises the same steps as claim 7 with a broader preamble therefore it is rejected on the same basis as claim 7.

As to claim 3, Brown-Mishra teaches the method of claim 2 including determining new portions of a class representation. Brown teaches creating a c-code representation of the Java class file (col. 7, lines 25-44, The front end compiler creates a c-code representation.), and creating a binary representation of said c-code representation; however Brown does not explicitly teach a method for determining new portions or creating binaries of only new portions.

Mishra teaches a method of determining new portions of code and creating binaries of the new portions (col. 17, lines 36-62).

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of Brown regarding a method for loading Java classes with the teachings of Mishra regarding the method of making a determination of which class to load because sending a smaller amount of data conserves bandwidth.

As to claim 6, Brown teaches the system of claim 5; however Brown does not explicitly teach a system for determining new portions of the c-code representation or sending only new portions of the c-code representations.

Mishra teaches a system including a means for determining new portions of a c-code representation, and a means for creating binary representations of only new portions of the c-code representations, and a means for sending only the new portions to a client (col. 17, lines 36-62).

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of Brown regarding a method for loading Java classes with the teachings of Mishra regarding the method of making a determination of which class to load because sending a smaller amount of data conserves bandwidth.

Thus because the Brown-Mishra combination renders claims 1-3 and 6-7 obvious; claims 1-3 and 6-7 are rejected.

Claims 4 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 6,295,638 to Brown et al. in view of U.S. Patent Number 6,389,589 to Mishra et al. and further in view of U.S. Patent Number 6,263,360 to Arnold et al..

As to claim 4, the teachings of Brown-Mishra combine to make claim 2 obvious; however Brown and Mishra do not explicitly teach sending the classes over a wireless network.

Arnold teaches a method of sending Java classes over a wireless network (col. 26, lines 25-67).

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of Brown-Mishra regarding a method for loading Java classes with the teachings of Arnold regarding a method for sending Java classes over a wireless network because Java is a common tool for developing wireless applications due to its platform independence (col. 24, lines 51-63 of Arnold).

As to claim 9, it features the limitation of determining new portion of a class and is rejected for the same reasons as claim 7. It would have been obvious to combine the Brown-Arnold combination with Mishra for reasons discussed for combining Brown and Mishra in claim 8.

Thus because the Brown-Mishra-Arnold combination renders claims 4 and 9 obvious claims 4 and 9 are rejected.

Claims 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 6,295,638 to Brown et al. in view of U.S. Patent Number 6,263,360 to Arnold et al..

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As to claim 8, it has the same limitations as claim 5 with the additional limitation of sending classes over a wireless network. Brown does not teach sending classes over a wireless network.

Arnold teaches a method of sending Java classes over a wireless network (col. 26, lines 25-67).

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of Brown regarding a system for loading Java classes with the teachings of Arnold regarding a system for sending Java classes over a wireless network because Java is a common tool for developing wireless applications due to its platform independence (col. 24, lines 51-63 of Arnold).

Thus because the Brown-Arnold combination renders claim 8 obvious claim 8 is rejected.

c) Claims 2, 6-7, and 9 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification provides no hint as to how the gateway determines which new portions of the of a Java class file are not loaded into a client device as claimed. The applicant provides no direction as to how the determination is made for determining at the gateway a new portion of said representation of the Java class file not loaded in said client device, therefore an excessive quantity of experimentation would be required in order for one of ordinary skill in the Computer Networking art to implement the applicant's invention as claimed.

Thus because claims 2, 6-7, and 9 are not enabled by the appellant's specification claims 2, 6-7 and 9 are rejected.

(11) Response to Argument

The appellant argues in argument 1, with regard to claim 5, that Brown column 7, lines 25-44 describes creation of FCCFs (fully caffeinated class files) in a server which are delivered directly to a client as illustrated in Brown Fig. 1; there is no suggestion of a gateway between the server and the clients in the Brown reference as relied upon by the examiner and that the examiner's assertion that the gateway could be a compiler in the server ignores the claim language.

The language of claim 5 does not limit the gateway to being *between* the server and the client. Claim 5 describes the gateway as being "coupled to said server and responsive to a Java class file for creating a c-code representation of said class file" and claim 5 defines "a network coupled between said gateway and said client device". These limitations do not limit the gateway to being *between* the server and the clients. For instance these limitations allow the gateway to be software on the server. A software gateway would still be coupled to the server and a network could be coupled between the software gateway on the server and the client devices. These limitations also allow the server to be between the gateway and the client devices. The gateway could still be coupled to the server and the server attached to a network to the clients devices thus the gateway would still be coupled to the server and network would still be coupled between the gateway and the client devices as required by the claim language. The

Examiner's claim interpretations are consistent with the appellant's specification. Therefore the appellant's argument is directed towards a limitation that is not part of the scope of the claim.

The appellant's specification states on page 6, lines 12-14 that, "The client loads the application through a gateway 37 at or wired to the server at the server location." In Brown the network computer, which is a client, sends a request to initiate loading of a class, which is an application (col. 5, lines 44-45). In response to this request files are delivered to the network computer from the server (col. 5, lines 45-47). These files include FCCFs (col. 5, lines 47-48). As stated by the appellant, FCCFs are created in the server. The FCCFs are created in a server by a compiler that is at or wired to the server at the server location (col. 7, lines 25-44). The compiler functions as a gateway because classes on the server go through the compiler (col. 7, lines 25-44) to become FCCFs before they are sent to the network computer or client (col. 5, lines 38-54). Therefore the compiler can be considered a gateway between the server and the clients.

Brown teaches the gateway as claimed. Claim 5 defines a system comprising "a gateway coupled to said server and responsive to a Java class file for creating a c-code representation of said class file." The front-end compiler in Brown creates a c-code representation from Java class files (col. 7, lines 25-44). The system of claim 5 also comprises "said gateway creating a binary representation of said c-code representation." The backend compiler in Brown creates optimized content from the c-code representation (col. 7, lines 25-44, the optimized content is a binary representation.). And finally claim 5 finishes defining the gateway with the system comprising "a network coupled between said gateway and said client device for sending the binary representation to said client device". Brown teaches a network coupled between the compiler on

the server and the network computer (col. 5, lines 38-54). Because Brown teaches all of the limitations claimed towards the gateway, Brown teaches the gateway as claimed.

For the reasons described, it is believed that Brown fully anticipates the appellant's invention as claimed in claim 5.

The appellant's arguments 2-4 repeat the argument presented in argument 1 and therefore are not persuasive for reasons discussed in the response to argument 1.

The appellant argues in argument 5 that Figure 3 and description page 6, bottom to page 7, top note that the gateway has a memory and sends files to the client, so the gateway impliedly can determine the new portion of a file. This argument does not address the 112 1st paragraph rejection because it does not show where the specification enables one skilled in the art to implement a system that can determine a new portion of a file. The omission from the specification of information on how to implement such a system would place of a burden of undo experimentation on one skilled in the art trying to implement such a system and therefore does not meet the requirements of U.S.C. 112 1st paragraph.

Additionally, the appellant has failed to address and clarify whether this claimed subject matter was disclosed expressly in the specification or was known in the art to artisans of ordinary skill. Thus, the appellant's failure to provide any arguments as to enablement and failure to point to any details within the appellant's specification results in a clear lack of enablement of the claimed subject matter.


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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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October 30, 2003

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